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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1965

No. 695

JOE ROBERT COLLIER, PETITIONER

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 14, 1965
CERTIORARI GRANTED OCTOBER 25, 1965

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Supreme Court of the United States

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JOE ROBERT COLLIER, PETITIONER

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISRICT OF KENTUCKY

DOCKET ENTRIES

D. C. Form No. 100A

CRIMINAL DOCKET 26439

THE UNITED STATES

vs.

JOE ROBERT COLLIER

18 USC 2421
WHITE SLAVE TRAFFIC ACT

1 Count

Attorneys

For U. S.:

WILLIAM E. SCENT

For Defendant:

MR. GUY C. SHEARER
903 Republic Building
Louisville, Kentucky

Abstract of costs	Cash Received and Disbursed			
	Date	Name	Rec.	Dis.
Fine,	4-12-65	Guy C. Shearer	5.00	
Clerk,	4-12-65	Treas. U. S.		5.00
Marshal,	Apr. 20	Guy C. Shearer, Atty—(Notice of Appeal)	5.00	
Attorney,	Apr. 20	Treas.—U.S.		5.00
Commissioner's Court,				
Witnesses,				

Date	Proceedings
1965	
2-15	Indictment returned and filed.
MAR 1965	J. S. 2 mailed.
3-16	Arraignment order signed by Judge Brooks 3/15/65. Plea of not guilty entered. Set for trial on March 24, 1965, at 9:30 a.m. Bond continued.
3/17	Praecipe for spoes to Gerald E. Pitts, Richard F. Hufford, Archie Stokes, Dennis L. DeBrandt, Paul Guest, Tom Zepada, Booker Blakey, Will Laird and Mrs. John Novak filed by U. S. Attorney. Spoes issued and delivered to U. S. Marshal.
3/18	Spoes returned executed: Laird, Pitts, Hufford, Stokes, DeBrandt, Guest, Zepada, and Blakey.
3/22	Praecipe for spoe to Candie Norwood filed by U. S. Atty. Spoe issued and delivered to U. S. Marshal.
3-24	Jury Verdict: "We, the Jury, find the defendant, Joe Robert Collier, Guilty as to the one count of the indictment. March 24, 1965 /s/ Arnold F. Pohl, Foreman".
[fol. 2]	
3/25	TRIAL ORDER dated 3/24/65 (Judge Brooks). Jury verdict GUILTY as charged in single count. Copies to Attorneys Martin and Collier.
3/25	JUDGMENT & COMMITMENT dated 3/24/65 (Judge Brooks). 1 Year & 1 Day imprisonment; serve 5 Months balance suspended; Probation 3 years w/super 18:3651
APRIL 65	J. S. 3 mailed
3/29	Spoe to Mrs. John Novak returned executed.
4-2	Motion for substitution of counsel filed by Joe R. Collier. Order tendered.
4-2	Motion for a New Trial and Motion for Bond filed by Guy C. Shearer.
4-5	Order signed by Judge Brooks 4-5-65, sustaining motion for substitution of counsel and denying motion for new trial. Copies to Joe R. Collier, Boyce F. Martin, Jr., and Guy C. Shearer.
4-9	Defendant, Joe R. Collier's Motion in Arrest of Judgment—filed by Guy Shearer, atty
4-12	Notice of appeal by defendant, Joe R. Collier, to U. S. Court of Appeal for 6th Circuit—filed by Guy C. Shearer, attorney. Copy mailed 4/12/65 to U. S. Attorney

Date	Proceedings
1965.	
4-12	Defendant, Joe R. Collier's "Application For Bond Pending Appeal" requesting an order of Court directing that any further service of time on judgment heretofore rendered against him be withheld pending final adjudication of appeal and that Court grant him a reasonable bond pending appeal—filed by Guy C. Shearer, attorney
4-12	Criminal Form No. 27 (Statement of Docket Entries), together with copy of Judgment and Commitment and copy of Notice of Appeal, mailed to Clerk U. S. Court of Appeals 6th Circuit.
4/15	Order signed by Judge Brooks 4/15/65 dismissing motion to arrest judgment and denying motion for bail pending appeal. Copies to U. S. Attorney and Guy C. Shearer.
4/20	"Notice of Appeal From The Court's Order Of April 15, 1965"—filed by Guy C. Shearer as attorney for defendant. Copy mailed to U. S. Attorney same date (4/20/65) Copy mailed to Clerk U. S. Court of Appeals 6th Circuit, together with copy of order of Court dated Apr. 15, 1965, on same date (4/20/65)
5-5	Motion to suspend remainder of 5 month sentence imposed, or for Court to give him credit on said sentence for time he has been confined in Jefferson County Jail filed by Guy C. Shearer.
5-6	Subpoena as to Candie Norwood returned executed.
5/11	Order signed by Judge Brooks 5/11/65—motion to modify sentence denied; motion to give credit for time he has been in custody awaiting trial was considered when the sentence was imposed and, therefore, that motion is also denied. Copies to U. S. Atty. and Guy C. Shearer.
[fol. 3]	
5-15	Motion for extension of time to and including June 14th, 1965 for filing and docketing record on appeal in Court of Appeals for 6th Circuit filed by Guy C. Shearer. Order tendered.
5-17	Order signed by Judge Brooks 5/17/65 extending to and including June 14, 1965, time for filing record on appeal and docketing appeal in U. S. Court of Appeals for 6th Circuit. Copies mailed 5/17/65 to Guy C. Shearer, Boyce Martin, U. S. Attorney, and to Clerk U. S. Court of Appeals 6th Circuit.

[fol. 4]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

No. 26439

(18 U. S. C., § 2421)

UNITED STATES OF AMERICA

vs.

JOE ROBERT COLLIER

INDICTMENT—Filed February 15, 1965

The Grand Jury charges:

FIRST COUNT

On or about the 15th day of December, 1964, in the Western District of Kentucky, JOE ROBERT COLLIER did knowingly transport and cause to be transported a certain woman, to-wit, Wanda York, in interstate commerce; that is, in commerce from Colorado Springs, State of Colorado, to Louisville, State of Kentucky, for the purpose of debauchery, prostitution and other immoral purposes.

In violation of Section 2421, Title 18, United States Code.

F nm 5000 or I nm 5 y or b

A True Bill.

/s/ [Illegible]
Foreman

/s/ William E. Scent
United States Attorney

[fol. 4a] [File Endorsement Omitted]

[fol. 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

[Title Omitted]

ORDER SETTING CASE FOR TRIAL—March 16, 1965

This case was called in open court on March 15, 1965 and there appeared John E. Stout, Assistant United States Attorney, and the defendant, Joe Robert Collier, in person and by counsel, William Goldberg.

Defendant acknowledged his identity, was furnished a copy of the indictment and advised of the nature of the charges contained therein. By counsel, formality of arraignment was waived and a plea of NOT GUILTY was entered as to Count 1.

IT IS ORDERED that trial will be held on March 24, 1965, at 9:30 A.M. Defendant shall stand on the covenant of the bond executed for his appearance in this court.

/s/ Henry L. Brooks
United States District Judge

March 15, 1965

[File Endorsement Omitted]

[fol. 6]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

[Title Omitted]

TRIAL ORDER—March 24, 1965

This case was called in open court on March 24, 1965 and there appeared Mr. John E. Stout, Assistant United States Attorney, and the defendant, Joe Robert Collier, in person and by counsel, Mr. William Goldberg.

Both sides announced ready and the following jury:

Francis Longacre, Sr.	J. Benjamin Horton
Matthew B. Quinn	Mrs. John Wirth
Martin Dunbar, Jr.	Arnold Pohl
William Hollis Bell	Stanley Dadesman
William A. Cain	Dallas Tinsley
Mrs. C. J. Armstrong	W. R. Moorman, Jr.

was impanelled and sworn.

Mr. Stout read the indictment and stated the case for the United States. Counsel for the defendant waived opening statement.

Evidence for the United States was introduced and concluded. Evidence was presented by the defendant. Mr. Goldberg argued the case for the defendant.

At the conclusion of all evidence and arguments, the Court instructed the jury and it retired to consider the case.

Later, the jury returned into open court and in the presence of all parties, read the following verdict:

"We, the Jury, find the defendant, Joe Robert Collier, Guilty as to the one count of the indictment.

March 24, 1965

/s/ ARNOLD F. POHL, Foreman"

March 24, 1965

/s/ Henry L. Brooks
United States District Judge

[File Endorsement Omitted]

Copies to attorneys of record 3-25-65

[fol. 7]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

[File Endorsement Omitted]

No. 26439

(18 U. S. C., § 2421)

UNITED STATES OF AMERICA

v.

JOE ROBERT COLLIER

VERDICT—March 24, 1965

We, the Jury, find the defendant, JOE ROBERT COLLIER, Guilty as to the one count of the indictment.

March 24, 1965.

/s/ Arnold F. Pohl
(Foreman)

[fol. 8]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

No. 26,439

UNITED STATES OF AMERICA

v.

JOE ROBERT COLLIER

JUDGMENT AND COMMITMENT—March 24, 1965

On this 24th day of March, 1965 came the attorney for the government and the defendant appeared in person and by counsel, William Goldberg.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty by a jury of the offense of knowingly transporting and causing to be transported a woman in interstate commerce for the purpose of debauchery, prostitution and other immoral purposes, in violation of 18 USC 2421, as charged in the one count of the indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court..

IT IS ADJUDGED that the defendant is guilty as charged and convicted. Pre-sentence report was furnished by the Probation Office and read by the Court.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a perior of One Year and One Day on the one count

IT IS ADJUDGED that the defendant is given *Five Months* to serve and the balance of the sentence is suspended and the defendant placed on probation in regard thereto for a period of Three Years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and committment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to:

/s/ Henry L. Brooks
United States District Judge

[File Endorsement Omitted]

[fol. 9]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
Criminal Division

[File Endorsement Omitted]

* * * *

MOTION FOR SUBSTITUTION OF COUNSEL—Filed
April 2, 1965

Comes the defendant, Joe R. Collier, and moves the court to:

1. Strike the name of Honorable William Goldberg in the above styled action, and
2. That the name of Honorable Guy C. Shearer, Suite 903 Republic Building, Louisville, Kentucky be substituted in lieu of the name of William Goldberg.

/s/ Joe R. Collier

[Certificate of Service (Omitted in Printing)]

ORDER

The foregoing motion having been duly filed, the parties having been notified of the motion and the court having been sufficiently advises, it is hereby ordered, that the said motion be, and the same is hereby sustained.

_____
Judge

[fol. 10]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

Criminal Division

[File Endorsement Omitted]

[Title Omitted]

MOTION FOR BOND—Filed April 2, 1965

Comes the defendant in person and by counsel and moves the court to fix a reasonable bail bond for the defendant pending a final determination, an appeal, or final adjudication in this action.

/s/ Joe R. Collier
defendant

/s/ Guy C. Shearer
GUY C. SHEARER
Attorney for Defendant
Republic Building
Suite 903
Louisville, Kentucky
Phone 583-0524

[Certificate of Service (Omitted in Printing)]

[fol. 11]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

Criminal Division

[File Endorsement Omitted]

[Title Omitted]

MOTION FOR A NEW TRIAL—Filed April 2, 1965

Comes the defendant, Joe R. Collier, and moves the court to grant him a new trial in the above styled action for the following reasons:

1. The Court erred in denying defendant's motion for acquittal made at the conclusion of the evidence.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. The court erred in admitting testimony of the witnesses to which defendant's counsel objected.
5. The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances; the jury returned from the jury room and asked the court if the jury might be permitted to hear more evidence in the case as revealed by the transcript of the record. The Court as the time stated that the jury was intelligent and should be able to make a determination of the facts in the case and also there was no positive proof that the defendant transported any woman in to Kentucky for immoral purposes nor did any woman so testify. When the jury returned to the court room asking for more evidence the court called attention to the fact that the defendant was driving an expensive car, which comment was highly irregular and prejudicial to the defendant in that it implied that defendant must have gotten the car through some illegal enterprise which no doubt was connected with the offense being heard against the defendant; in other words the court's statement could easily have led the jury into believing that it could guess

[fol. 12] this defendant to be guilty and further guess him in the federal prison.

/s/ Joe R. Collier
Defendant

/s/ Guy C. Shearer
Attorney for Defendant
Suite 903 Republic Building
Louisville, Kentucky 40202
Phone 583-0524

[Certificate of Service (Omitted in Printing)]

[fol. 13]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

[Title Omitted]

ORDER SUSTAINING MOTION TO SUBSTITUTE COUNSEL AND DENYING MOTION FOR NEW TRIAL—April 5, 1965

Motion for a substitution of counsel having been filed, said motion is sustained.

Motion for a new trial having been filed on behalf of Joe R. Collier and having been considered by the Court,

IT IS ORDERED that said motion is denied.

/s/ Henry L. Brooks
United States District Judge

Dated 4/5/65

Copies to:

MR. JOE R. COLLIER
Jefferson County Jail
514 West Liberty Street
Louisville, Kentucky

BOYCE F. MARTIN, JR., Esquire
United States Attorney
Louisville, Kentucky

MR. GUY C. SHEARER
903 Republic Building
Louisville, Kentucky

Copies to above
4-5-65
/s/ C. Sims

[File Endorsement Omitted]

[fol. 14]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

Criminal Division

[File Endorsement Omitted]

[Title Omitted]

MOTION IN ARREST OF JUDGMENT—Filing April 9, 1965

Comes the defendant, Joe R. Collier, and moves the court to arrest the judgement for the following reasons:

1. The indictment does not state facts sufficient to constitute a offense against the United States.
2. The testimony and evidence presented was not sufficient to constitute an offense against the United States.
3. The court is without jurisdiction of the offense, in that the offense if any was not committed in this district.

/s/ Joe R. Collier
Defendant

/s/ Guy C. Shearer
GUY C. SHEARER
Attorney for Defendant
Suite 903 Republic Building
Louisville, Kentucky 40202
Phone 583-0524

[Certificate of Service (Omitted in Printing)]

[fol. 15]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
DIVISION

[File Endorsement Omitted]

Case #26439

UNITED STATES OF AMERICA, PLAINTIFF

vs.

JOE R. COLLIER, DEFENDANT
514 W. Liberty Street
Louisville, Kentucky

GUY C. SHEARER
Appellants Attorney
Suite 903 Republic Bldg.
Louisville, Kentucky
40202

NOTICE OF APPEAL—Filed April 12, 1965

Concise statement of judgment or order, giving date and sentence—

The offense: Violation of 18 U.S.C. #2421—knowingly transporting and causing to be transported a woman in interstate commerce for the purpose of debauchery, prostitution and other immoral purposes, in violation of 18 U.S.C.—2421.

Jury Verdict: "We, the jury, find the defendant Joe Robert Collier, guilty as to the one count of the indictment. March 24, 1965. Arnold F. Pohl, Foreman.

Trial Order dated 3/24/65. Jury verdict guilty as charged in single count. Judgment and commitment dated 3/24/65 (Judge H. Brooks) one years and one day imprisonment: Serve 5 months balance suspended: Probation 3 years W. Supervision—18:3651

Judgment: It is adjudged that the defendant is given five months to serve and that balance of the sentence is suspended and the defendant placed on probation in regard thereto for a period of three years. March 24, 1965. Name of institution where now confined, Jefferson County Jail, 514 West Liberty Street, Louisville, Kentucky, 40202.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Sixth Circuit from the above-stated judgment.

Date—April 10th, 1965.

/s/ Joe R. Collier
Appellant

/s/ Guy C. Shearer
Attorney for Appellant
Suite 903 Republic Bldg.
Louisville, Kentucky 40202
583-0524

On April 12, 1965, copy mailed to U.S. Attorney. On same date copy mailed to Clerk U.S. Court of Appeals 6th Circuit.

/s/ Martin R. Glenn
Clerk

[fol. 16]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
CRIMINAL DIVISION

[File Endorsement Omitted]

[Title Omitted]

MOTION REQUESTING THAT SERVICE OF SENTENCE BE WITHHELD PENDING APPEAL AND FOR RELEASE ON BOND—
Filed April 12, 1965

Comes the defendant, Joe R. Collier, and moves the court for an order directing that any further service of time on judgment heretofore rendered against him be withheld pending final adjudication of the appeal in this action.

The defendant further moves the court to grant him a reasonable bond pending the appeal in this case.

/s/ Joe R. Collier
Defendant

/s/ Guy C. Shearer
GUY C. SHEARER
Attorney for Defendant
Suite 903 Republic Bldg.
Louisville, Kentucky 40202
583-0524

[Certificate of Service (Omitted in Printing)]

[fol. 17]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CRIMINAL ACTION

No. 26439

UNITED STATES OF AMERICA, PLAINTIFF

v.

JOE R. COLLIER, DEFENDANT

ORDER DENYING MOTION IN ARREST OF JUDGMENT AND MOTION FOR BAIL—April 15, 1965

On March 24, 1965, the defendant, Joe R. Collier, was convicted by a jury of violation of the White Slave Act, Title 18 U.S.C. Section 2421, and a sentence of one year and one day was imposed, with the defendant to serve five (5) months and being placed on probation for the balance of the sentence. A motion for a new trial was filed on April 2, 1965, and a motion in arrest of judgment was filed on April 9, 1965. A notice of appeal with a motion for bail pending appeal was filed on April 12, 1965.

As provided by Rule 37 (2) Federal Rules of Criminal Procedure, an appeal must be taken within ten (10) days of entry of judgment of conviction, unless a motion for new trial or a motion in arrest of judgment has been made within the ten (10) day period, in which event the appeal may be taken within ten (10) days after the denial of such motion.

[fol. 18] In this case, neither the motion for a new trial was timely, see Rule 33 Federal Rules of Criminal Procedure, nor was the motion in arrest of judgment timely, see Rule 34 Federal Rules of Criminal Procedure. The filing of a motion for a new trial and motion in arrest of judgment within the time prescribed by the Rules is mandatory and jurisdictional. United States v. DeRocco

320 F.2d 58 (6th Circuit 1963); United States v. Robinson 361 U.S. 220; Bryant v. United States, 261 F.2d 229 (1958 6th Circuit). The time in which an appeal must be taken is also jurisdictional. Lott v. United States, 367 U.S. 421.

The motion for a new trial having heretofore been denied,

IT IS NOW ORDERED that the motion to arrest judgment is dismissed, and the motion for bail pending appeal is denied.

April 15, 1965

/s/ Henry L. Brooks
United States District Judge

For the Plaintiff:

BOYCE F. MARTIN, JR., Esquire
United States Attorney
Louisville, Kentucky

For the Defendant:

GUY C. SHEARER, Esquire
903 Republic Building
Louisville, Kentucky

Copies to above
4/15/65
/s/ C. Sims

[File Endorsement Omitted]

[fol. 19]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

[File Endorsement Omitted]

[Title Omitted]

NOTICE OF APPEAL FROM THE COURT'S ORDER OF APRIL 15, 1965—Filed April 20, 1965

* * * *

Concise statement of judgment or order, giving date and sentence—

The offense: Violation of 18 U.S.C. #2421—knowing transporting and causing to be transported a woman in interstate commerce for the purpose of debauchery, prostitution and other immoral purposes, in violation of 18 U.S.C. #2421.

Attorney—Guy C. Shearer—903 Republic Bldg—Louisville, Ky.

Jury Verdict: "We, the jury, find the defendant, Joe Robert Collier, guilty as to the one count of the indictment, March 24, 1965. Arnold F. Pohl, Foreman.

Trial Order: dated 3/24/65. Jury verdict guilty as charged in single count. Judgment and commitment dated 3/24/65 (Judge H. Brooks) six years and one day imprisonment, serve 5 months balance suspended; Probation 3 years, W. Supervision—18:2651.

Judgment: It is adjudged that the defendant is given five months to serve and that balance of the sentence is suspended and the defendant placed on probation in regard thereto for a period of three years. March 24, 1965. Name of institution where now confined, Jefferson County Jail, 514 West Liberty Street, Louisville, Kentucky, 40202.

Appeal—To U.S. District Court of Appeal for the Sixth District. Federal Building, Cincinnati, Ohio.

[fol. 20] *Order:* On March 24, 1965, the defendant, Joe R. Collier, was convicted by a jury of violation of the White Slave Act, Title 18 U.S.C. Section 2421, and a sentence of one year and one day was imposed, with the defendant to serve five (5) months and being placed on probation for the balance of the sentence. A motion for a new trial was filed on April 2, 1965, and a motion in arrest of judgment was filed on April 9, 1965. A notice of appeal with a motion for bail pending appeal was filed on April 12, 1965.

As provided by Rule 37 (2) Federal Rules of Criminal Procedure, an appeal must be taken within ten (10) days of entry of judgment on conviction, unless a motion for a new trial or a motion in arrest of judgment has been made within the ten (10) day period, in which event the appeal may be taken within ten (10) days after the denial of such motion.

In this case, neither the motion for a new trial was timely, see Rule 33 Federal Rules of Criminal Procedure, nor was the motion in arrest of judgment timely, See Rule 34 Federal Rules of Criminal Procedure. The filing of a motion for a new trial and motion in arrest of judgment within the time prescribed by the Rules is mandatory and jurisdictional. United States v. Dr Rocco 320 F.2nd 58 (6th Circuit 1963) : United States v. Robinson 361 U.S. 220; Bryant v. United States, 261 F.2nd 229 (1958 6th Circuit). The time in which an appeal must be taken is also jurisdictional. Lott v. United States, 367 U.S. 421.

The motion for a new trial having heretofore been denied,

IT IS NOW ORDERED that the motion to arrest judgment is dismissed, and the motion for bail pending appeal is denied.

April 15, 1965.

/s/ Joe Collier
Defendant

/s/ Guy C. Shearer
GUY C. SHEARER
Attorney for Defendant
Suite 903 Republic Bldg.
Louisville, Kentucky 40202
Phone 583-0524

[fol. 21]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

[File Endorsement Omitted]

[Title Omitted]

MOTION TO SUSPEND SENTENCE, ETC.,—Filed May 5, 1965

Comes the defendant, Joe Robert Collier, and moves the Court:

1. To suspend the remainder of the five (5) months sentence heretofore imposed upon him in the above styled action.

2. The defendant, Joe Robert Collier, further moves the Court that in the event the Court is unwilling to suspend the aforementioned five (5) months sentence, then the defendant hereby moves the Court to give him credit on the said sentence for the time he has been confined in the Jefferson County Jail.

_____
Defendant

/s/ Guy C. Shearer
GUY C. SHEARER
Attorney for Defendant
Suite 903 Republic Bldg.
Louisville, Kentucky 40202
Phone 583-0524

[Certificate of Service (Omitted in Printing)]

[fol. 22]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

[Title Omitted]

ORDER TO MODIFY SENTENCE, ETC.,—May 11, 1965

The motion having been made in this case to modify sentence, and the Court having considered it, said motion is denied.

Defendant's motion to give credit for the time he has been in custody awaiting trial was considered when the sentence was imposed and, therefore, that motion is also denied.

May 11, 1965

/s/ Henry L. Brooks
HENRY L. BROOKS
United States District Judge

For the Plaintiff:

BOYCE F. MARTIN, JR., Esquire
United States Attorney
Federal Building
Louisville, Kentucky

For the Defendant:

GUY C. SHEARER, Esquire
903 Republic Building
Louisville, Kentucky

[File Endorsement Omitted]

[fol. 23]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

[File Endorsement Omitted]

[Title Omitted]

MOTION TO EXTEND TIME TO FILE RECORD AND DOCKET APPEAL—Filed May 15, 1965

Comes the defendant, Joe R. Collier, and moves the Court that the time for the filing of the record of appeal and docketing the appeal in the United States District Court of Appeals for the Sixth Circuit in this case be extended to and including June 14th, 1965.

/s/ Guy C. Shearer
Attorney for Defendant
Suite 903 Republic Building
Louisville, Kentucky
Phone 583-0524

[Certificate of Service (Omitted in Printing)]

[fol. 24]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

[File Endorsement Omitted]

[Title Omitted]

ORDER EXTENDING TIME TO FILE RECORD AND TO DOCKET APPEAL—May 17, 1965

Upon motion of defendant by counsel, it is ordered that the time for the filing of the record of appeal and docketing the appeal in this case in the United States District Court of Appeals for the Sixth Circuit in Cincinnati, Ohio be, and the same is hereby extended to and including June 14th, 1965.

/s/ Henry L. Brooks
HENRY L. BROOKS
Judge
5/17/65

Copies mailed 5/17/65 to

GUY C. SHEARER, atty;
BOYCE MARTIN, U.S. Attorney;
CARL W. REUSS, Clk U.S. Ct of Appeals 6th Circuit

/s/ Martin R. Glenn
Clerk

[fol. 24A]

REQUESTS FOR SUBPOENAS AND SUBPOENAS ISSUED

(Omitted in Printing)

[fol. 24B]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

[Title Omitted]

CLERK'S CERTIFICATE

I, Martin R. Glenn, Clerk of the United States District Court for the Western District of Kentucky, certify that the papers and things submitted herewith and enumerated below comprise the record on appeal in the above matter as same appears in my office:

1. Copy of docket entries.
2. Indictment. Filed February 15, 1965.
3. Order of Court dated March 15, 1965, on arraignment reciting defendant entered plea of not guilty and setting trial for March 24, 1965.
4. (a) Trial Order of the Court dated March 24, 1965, with Jury Verdict referred to at (b) below attached thereto.
   (b) Jury Verdict dated March 24, 1965, reading as follows: "We, the Jury, find the defendant, Joe Robert Collier, Guilty as to the one count of the indictment. March 24, 1965. /s/ Arnold F. Pohl, Foreman". Filed March 24, 1965.
5. Judgment and Commitment of the Court dated March 24, 1965.
6. Motion of defendant to substitute Guy C. Shearer as counsel in lieu of William Goldberg. Filed April 2, 1965.
7. Defendant's "Motion For Bond". Filed April 2, 1965.
8. Defendant's "Motion For A New Trial". Filed April 2, 1965.
9. Order of Court dated April 5, 1965, denying motion for new trial.
10. Defendant's "Motion In Arrest of Judgment". Filed April 9, 1965.

11. Defendant's "Notice of Appeal".
Filed April 12, 1965.
12. Defendant's "Application For Bond Pending Appeal". Filed April 12, 1965.
13. Order of Court dated April 15, 1965, dismissing motion to arrest judgment and denying motion for bail pending appeal.

[fol. 24C] 14. Defendant's "Notice Of Appeal From The Court's Order of April 15, 1965".
Filed April 20, 1965.
15. Motion of Joe Robert Collier to suspend remainder of sentence or to give him credit for time confined in jail. Filed May 5, 1965.
16. Order to Court dated May 11, 1965, denying motion referred to at Item 15 above.
17. Defendant's motion for extension of time in which to file record on appeal and docket appeal in U. S. Court of Appeals. Filed May 15, 1965.
18. Order of Court dated May 17, 1965, extending to and including June 14, 1965, time for filing record on appeal and docketing appeal in U. S. Court of Appeals for 6th Circuit.

* * * *

A. Requests for subpoenas and subpoenas issued.

WITNESS my signature and the seal of the United States District Court for the Western District of Kentucky on the 8th day of June, 1965.

/s/ Martin R. Glenn
MARTIN R. GLENN
Clerk, U. S. District Court
Western District of Kentucky

[SEAL]

[fol. 25] ORIGINAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CINCINNATI, OHIO

[File Endorsement Omitted]

16599

Re: Cr. No. 26,439

JOE ROBERT COLLIER, PETITIONER-DEFENDANT

vs.

UNITED STATES OF AMERICA, RESPONDENT-PLAINTIFF

PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY AT LOUISVILLE—Filed May 21, 1965

JOE ROBERT COLLIER
Petitioner—PRO SE
514 W. Liberty Street
Jefferson County Jail
Louisville, Kentucky 40202

[fol. 26]

PETITION FOR MANDAMUS

Comes now, Joe Robert Collier, who hereinafter will be called Petitioner. It is submitted that, on March 24, 1965, in the United States District Court, Western District of Kentucky, at Louisville, Petitioner was found guilty by a jury and sentenced to 1 year and a day in prison for the alleged violation of Title 18, U.S.C. Section 2421. It was adjudged that petitioner serve 5 months in prison, balance of said sentence suspended and, three (3) years on probation. However, petitioner has elected not to serve said sentence pending the outcome of his Appeal of said conviction.

Nine (9) days after petitioner's conviction, (April 2, 1965) a motion for a new trial was properly submitted

in the District Court. On April 5, 1965, said "Motion for a new trial" was denied. A Notice of Appeal from said conviction was filed April 12, 1965. Also, on April 12, 1965, an "Application for Bond pending appeal" was likewise tendered. And, on April 15, 1965, said application for Bond pending Appeal was denied on grounds that, "neither the motion for a new trial was timely", rule 33 F.R. Cr. Proc., which in effect caused the Application for Bond pending Appeal to be not timely filed. (See Court's Orders Attached herewith).

[fol. 27] Petitioner now contends that, rule 37, F.R. Cr. Proc. states as follows:

> "An appeal must be taken within ten (10) days of entry of judgment of conviction, *unless* a motion for new trial or a motion in arrest of judgment has been made within the ten (10) day period, in which event the appeal may be taken within ten (10) days after the denial of such motion."

Wherefore, exhibit one (1) attached herewith explicitly shows that petitioner did comply with the mandate of rule 37 F.R. Cr. Proc. in all respects. See also, Mickey Cohen v. United States, U.S. S.Ct. (1963).

CONCLUSION

Wherefore, the manifestation of the District Court's orders (exhibits 2 and 3 attached herewith) is wholly and clearly erroneous upon its face, which constitutes an abuse of discretion. Rule 37, F.R. Cr. Proc. It is therefore prayed that this honorable Court will issue a Mandamus or some other appropriate order directing the District Court to fully comply with Rule 37, F.R. Cr. Proc. and set an Appeal Bond, Cohen supra, which is not too excessive, U.S.C.A. Amend. 8, Yates v. United States, 356 U.S. 363, (1958), Bordy v. U. S., 81 S.Ct. 197, (1960), This Court's rule, (Rule 30), Brown v. U. S., 359 U.S. 41-52, (1959).

Respectfully submitted,

JOE ROBERT COLLIER
Petitioner-PRO SE

[fol. 28]

EXHIBIT 1 TO PETITION

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
WESTERN DISTRICT OF KENTUCKY
Louisville, Ky.

40202

May 12, 1965

Mr. Joe R. Collier
Jefferson County Jail
514 West Liberty Street
Louisville, Kentucky

United States of America vs.
Joe Robert Collier
Criminal Action No. 26,439

Dear Sir:

On May 10, 1965, there was received your letter dated May 6, 1965, stating that you desire a copy of the indictment in the above case and also copies of all papers filed on your behalf by Mr. Guy C. Shearer, attorney, after your conviction, with information as to the results thereof.

Enclosed herewith is a copy of the indictment filed February 15, 1965.

Also enclosed are copies of all papers that have been filed in this office by Mr. Guy C. Shearer, attorney, on your behalf, consisting of the following:

"Motion For Substitution of Counsel" filed April 2, 1965.
"Motion For Bond" filed April 2, 1965.
"Motion For A New Trial" filed April 2, 1965.
"Motion In Arrest of Judgment" filed April 9, 1965.
"Notice Of Appeal" filed April 12, 1965.
"Application For Bond Pending Appeal" filed April 12, 1965.
"Notice Of Appeal From The Court's Order Of April 15, 1965". Filed April 20, 1965.
"Motion", filed May 5, 1965.

Also enclosed are copies of orders of this Court dated April 5, 1965, April 15, 1965, and May 11, 1965.

Yours sincerely,

/s/ Martin R. Glenn
MARTIN R. GLENN
Clerk, U. S. District Court

cc: Mr. Guy C. Shearer
903 Republic Building
Louisville, Kentucky

[fol. 29]

[CLERK'S NOTE: Exhibit 2 is omitted from the record here. See p. 13, *supra*]

[fols. 30-31]

[CLERK'S NOTE: Exhibit 3 is omitted from the record here. See p. 18, *supra.*]

[fol. 32]

[PROOF OF SERVICE (Omitted in Printing)]

[fol. 33]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

[File Endorsement Omitted]

[Title Omitted]

RESPONSE AND MOTION—filed May 29, 1965

On May 21, 1965, the defendant-petitioner filed in this Court a "Petition for a Writ of Mandamus to the United States District Court for the Western District of Kentucky at Louisville." This is in response to said petition.

The order entered by the District Court Judge, dated April 15, 1965, clearly sets out the reasons why defendant-petitioner did not file a timely notice of appeal, and is, therefore, not entitled to bail pending appeal. The defendant-petitioner was convicted by a jury of a violation of the White Slave Traffic Act, 18 U.S.C., section 2421, on March 24, 1965. He was given a sentence of one year and one day, five months to be served and the balance of the sentence to be probated. Defendant-petitioner filed a motion for a new trial on April 2, 1965. He filed a motion in arrest of judgment on April 9, 1965. A notice of appeal and a motion for bail pending appeal was filed on April 12, 1965.

[fol. 34] The motion for a new trial, which was filed on April 2, 1965, was not timely in that it was filed more than five days after the verdict. Rule 33, Federal Rules of Criminal Procedure, provides that a motion for a new trial "*shall* be made within five days after verdict or finding of guilty, or within such further time as the Court may fix during the five-day period." No further time was fixed by the Court.

The motion in arrest of judgment, which was filed on April 9, 1965, was not timely filed. Rule 34, Federal Rules of Criminal Procedure, provides that a motion in arrest of judgment "*shall* be made within five days after determination of guilt or within such further time as the Court may fix during the five-day period." No such further time was fixed by the Court.

The notice of appeal with a motion for bail pending appeal, which was filed on April 12, 1965, was not timely filed. Rule 37(2), Federal Rules of Criminal Procedure, provides that "an appeal by a defendant may be taken within ten days after entry of the judgment or order appealed from, but if a motion for a new trial or in arrest of judgment had been made within the ten-day period an appeal from a judgment of conviction may be taken within ten days after entry of the order denying the motion." Although a motion for a new trial and a motion in arrest of judgment had been filed within ten days from the judgment of conviction, they were not timely filed as required by Rules 33 and 34, Federal Rules of Criminal Procedure, and therefore they were not effective and did not toll the time required for filing a [fol. 35] notice of appeal. Therefore, the notice of appeal having been filed some 19 days after the judgment of conviction, it was not timely, and therefore it necessarily follows that defendant-petitioner is not entitled to bail.

WHEREFORE, it is prayed that for the foregoing facts and reasons the defendant-petitioner's petition for a writ of mandamus be denied, and that the appeal herein be dismissed.

UNITED STATES OF AMERICA
BOYCE F. MARTIN, JR.
United States Attorney

By /s/ John E. Stout
JOHN E. STOUT
Assistant U. S. Attorney

[CERTIFICATE OF SERVICE (Omitted in Printing)]

[fol. 36] No. 16,599

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

[File Endorsement Omitted]

JOE ROBERT COLLIER, DEFENDANT-PETITIONER

v.

UNITED STATES OF AMERICA, PLAINTIFF-RESPONDENT

ORDER DENYING PETITION FOR WRIT OF MANDAMUS AND DISMISSING APPEAL.—Filed June 16, 1965

Before CECIL, O'SULLIVAN and PHILLIPS, Circuit Judges.

Petitioner has filed a petition for writ of mandamus against the Judge of the United States District Court for the Western District of Kentucky at Louisville, which in effect is an application for bail pending appeal. Respondent has moved that the appeal be dismissed because the notice of appeal was not filed until some nineteen days after the judgment of conviction.

The order of the district court, entered April 15, 1965, summarizes the pertinent facts as follows:

[fol. 37] "On March 24, 1965, the defendant, Joe R. Collier, was convicted by a jury of violation of the White Slave Act, Title 18, U.S.C. Section 2421, and a sentence of one year and one day was imposed, with the defendant to serve five (5) months and being placed on probation for the balance of the sentence. A motion for a new trial was filed on April 2, 1965, and a motion in arrest of judgment was filed on April 9, 1965. A notice of appeal with a motion for bail pending appeal was filed on April 12, 1965.

"As provided by Rule 37 (2) Federal Rules of Criminal Procedure, an appeal must be taken within ten (10) days of entry of judgment of conviction, unless a motion for new trial or a motion in arrest of judgment has been made within the ten (10) day

period, in which event the appeal may be taken within ten (10) days after the denial of such motion.

"In this case, neither the motion for a new trial was timely, see Rule 33 Federal Rules of Criminal Procedure, nor was the motion in arrest of judgment timely, see Rule 34 Federal Rules of Criminal Procedure. The filing of a motion for a new trial and motion in arrest of judgment within the time prescribed by the Rules is mandatory and jurisdictional."

Under the holdings of this court and Rules 33, 34 and 37(2) of the Federal Rules of Criminal Procedure, the appeal was not timely. *United States* v. *DeRocco*, 320 F.2d 58 (C.A. 6).

[fol. 38] It is ORDERED that the petition for writ of mandamus be and hereby is overruled, the motion to dismiss the appeal is sustained and the appeal is dismissed.

ENTERED BY ORDER OF THE COURT

/s/ Carl W. Reuss
Clerk

[fol. 39]

[Clerk's Certificate to foregoing transcript omitted in printing]

[fol. 40]

SUPREME COURT OF THE UNITED STATES

No. 331 Misc., October Term, 1965

JOE ROBERT COLLIER, PETITIONER

v.

UNITED STATES

ORDER DENYING PETITION FOR WRIT OF MANDAMUS, TREATING PAPERS SUBMITTED AS A PETITION FOR WRIT OF CERTIORARI AND GRANTING PETITION FOR WRIT OF CERTIORARI—October 25, 1965

ON CONSIDERATION of the motion for leave to file a petition for writ of mandamus herein,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, denied.

Treating the papers submitted as a petition for writ of certiorari, the motion for leave to proceed in forma pauperis and the petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted. The case is transferred to the appellate docket as No. 695 and placed on the summary calendar.

October 25, 1965

☆ U. S. GOVERNMENT PRINTING OFFICE: 1965 797453 428

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